

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1039

76-1039

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P/S

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 76-1039

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UNITED STATES OF AMERICA

-against-

CARLOS VALLE,

Defendant-Appellant.

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On Appeal From The United States  
District Court For The  
Southern District of New York

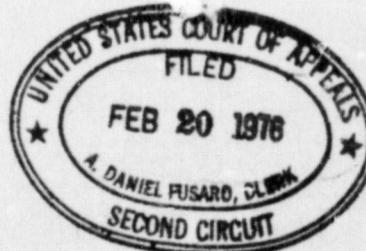
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APPELLANT'S APPENDIX

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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:  
UNITED STATES OF AMERICA,  
:  
-against-  
:  
CARLOS VALLE,  
:  
Defendant-Appellant.  
:  
-----x

APPENDIX  
To Brief for the Appellant

Submitted by,

FREDERICK H. COHN, ESQ.  
Attorney for Def. Appellant  
299 Broadway  
New York, New York 10007  
212 349-7755

A P P E N D I X

Table of Contents

	<u>page</u>
List of Docket Entries.....	A. 1
Indictment .....	A. 3
Charge of the Court.....	A. 4
Judgment .....	A. 19
Notice of Appeal .....	A. 20

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE CANNELL

75 CRIM. 857

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

CARLOS ALBERTO VALLE

ATTORNEYS

For U. S.:

Robert J. Costello, AU  
791-1922

For Defendant:

(1?) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC'D BY
J.S. 2 mailed	Clerk			
J.S. 3 mailed	Marshal			
Violation	Docket fee			
Title 18				
Sec. 871				
Threats against the President.				
( One Count)				

DATE	PROCEEDINGS
8-27-75	Filed indictment.
9-2-75	Deft. (no atty. present) Court directs entry of not guilty plea. continued remanded in lieu of bail fixed at \$10,000. by Case assigned to Judge Cannell for all purposes.
10-28-75	Filed consent order that deft be brought to Sullivan Hospital in the custody of U.S. Marshal to visit his grand mother - Cannella, J.,
11-24-75	Filed deft. Valle's notice of motion re: suppression.
11-26-75	Filed Govt.'s affidavit re: opposition to motion of deft. to suppress.
11-26-75	Filed pro-vid. on motion of 11-24-75.
12-1-75	Jury trial begun before Judge Pollack.
12-2-75	Trial con'td. Jury disagreement. Jury excused. Trial on 12-3-75 at 2PM. Pollack, J.

DATE	PROCEEDINGS
12-3-75	2nd trial begun before Judge Pollack with a jury.
12-4-75	Trial cont'd. Both sides rest. Jury verdict deft. found guilty as charged. Jury polled. Jury excused. Sentence set provisionally for 12-23-75 at 9:45 AM. Room 519. or 1-15-76 at 9:45AM room 905. Deft. remanded. Pollack, J.
1-15-76	Deft. fatty. Frederick Cohen present) sentenced. One year, with due credit for time already served. Deft. advised of his right to appeal. Deft. remanded. Pollack, J.
01-15-76	Filed Judgment (atty. present) One (1) Year, with credit for time served. Pollack, J. Issued all copies.
01-20-76	Filed deft. Carlos Valle- notice of appeal from judgment of 1-15-76. Mailed copies to U.S. Atty. & deft.
01-27-76	Filed Govt's requests to charge.
01-27-76	Filed deft's request to charge.
	A TRIM COPY DAVIDSON F. BUREAU OF INVESTIGATION By V. Clark

RJC:als

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

-v-

INDICTMENT

CARLOS ALBERTO VALLE,  
a/k/a Carlos Valle,

75 Cr.

Defendant.

-----x  
COUNT ONE

The Grand Jury charges:

On or about the 17th day of August, 1975, in  
the Southern District of New York, CARLOS ALBERTO VALLE,  
a/k/a Carlos Valle, the defendant, unlawfully, knowingly  
and wilfully did make a threat to take the life of and to  
inflict bodily harm upon the President of the United States,  
in that he called the New York City Police Department  
Emergency Telephone Number 911 and stated that one CARLOS  
VALLE had threatened to kill the President.

(Title 18, United States Code, Section 871.)

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
PAUL J. CURRAN  
United States Attorney

valle 1

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ollack 3

CHARGE OF THE COURT.

4                   THE COURT: Ladies and gentlemen, we have reached  
5                   the conclusion of a very, very short trial as you will all  
6                   agree. I shall now give you your final instructions which  
7                   will guide your deliberations. It is your recollection of  
8                   the facts that counts here, not the recollection of attorneys  
9                   and not my recollection or any opinions other than your own.

10                  It is for you to determine the weight that will  
11                  be given to the evidence, the credibility that you will  
12                  extend to the witnesses who testified, and the reasonable  
13                  inferences that are to be drawn from the evidence that has  
14                  been received.

15                  You must approach your duty with an attitude of  
16                  complete fairness and impartiality, without the slightest  
17                  trace of prejudice or bias or sympathy either for or  
18                  against the Government or the defendant. You are the sole  
19                  and exclusive judges of the facts. Your decision as to  
20                  the fact is final and conclusive. The law you receive from  
21                  me, and that will guide you on the legal side.

22                  It is essential in the performance of your  
23                  duties that as to anything that was ordered stricken from  
24                  the record, you put it out of your mind and disregard it.

25                  As I have indicated earlier, the indictment

2 here is but a formal method of accusing a person of a crime,  
3 and bringing the case into Court for trial and determina-  
4 tion. It's not any evidence that a crime has been committed  
5 and no inference of any kind may be drawn from the fact of  
6 an indictment. The grand jury which returned the indict-  
7 ment was not asked to find out if the defendant was guilty.  
8 That is solely your function.

9 The indictment in this case charges that the  
10 defendant violated Section 871 of Title 18 of the United  
11 States Code which provides, in pertinent part, as follows:

12 "Whoever knowingly and willfully makes any  
13 threat to take the life of or to inflict bodily harm on  
14 the President of the United States commits a criminal  
15 offense."

16 The defendant before you has pleaded not guilty.  
17 That places on the Government the burden of proving guilt  
18 beyond a reasonable doubt with respect to the crime that  
19 the defendant is accused of having committed. That burden  
20 never shifts. A defendant is under no obligation to prove  
21 his innocence. Indeed a defendant doesn't have to submit  
22 any evidence at all. On the contrary, under our law and  
23 under our system a defendant is presumed to be innocent  
24 of any charge laid against him in an indictment. That pre-  
25 sumption existed when the indictment was handed down and

2 the fact that a defendant does not take the stand under the  
3 law creates no inference against him.

4 A defendant's presumption of innocence remains  
5 throughout the trial and in your deliberations. It is a  
6 presumption which is sufficient in itself to require an  
7 acquittal of a defendant unless you, the jury, on all the  
8 evidence are convinced of his guilt beyond a reasonable  
9 doubt.

10 A reasonable doubt is one that arises out of  
11 the evidence in the case or the lack of evidence. It's a  
12 doubt which is not merely shadowy. A reasonable doubt is  
13 one that appeals to your reason, to your judgment, to your  
14 common sense, and to your experience. It is not an excuse  
15 to avoid performance of an unpleasant duty. A reasonable  
16 doubt is such as would cause prudent people to hesitate  
17 before acting in matters of importance to themselves.

18 Putting that a little differently. If you  
19 are confronted, as indeed you are here, with an important  
20 decision, and after reviewing all the factors that are  
21 pertinent to that decision you find yourselves beset by  
22 uncertainty and unsure of your judgment, then you have a  
23 reasonable doubt.

24 Conversely, in that same situation if you have  
25 taken into account all the elements that pertain to the

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2 problem and you find that you have no uncertainty and no  
3 reservation about your judgment, then you have no reasonable  
4 doubt.

5 Now, when we say that there is a burden to  
6 prove something beyond a reasonable doubt, we do not mean  
7 that you must find proof to a positive certainty or proof  
8 beyond all possible doubt. If that was the rule, few per-  
9 sons, however guilty, could ever be convicted.

10 Except where you have matters from their nature  
11 which could be resolved with mathematical certainty, it is  
12 practically impossible for a person to be absolutely and  
13 completely convinced of any fact. So absolute certainty  
14 is not the test.

15 You are going to have to rely upon your own  
16 common sense and general experience in evaluating the evi-  
17 dence. As I have frequently said to you jurors, when you  
18 go into the jury box or into the jury room you don't check  
19 your common sense outside and blind yourselves to your  
20 ordinary judgment and common experience.

21 In evaluating the evidence which has been  
22 placed before you you will determine the reliability of  
23 those witnesses that you have heard and the extent to  
24 which you can count on any or all of them for accurate  
25 accounts of the facts. You have had an opportunity to

2 observe the witnesses as they testified. You want to be  
3 asking yourselves and thinking together how each witness  
4 impressed you. Did the witness appear to be truthful,  
5 candid, frank and forthright, or did the witness seem eva-  
6 sive or shifty or suspect or in any other way? Did the  
7 witness appear to know what he was talking about and did  
8 he impress you as having a purpose to report his knowledge  
9 to you truthfully and accurately? Was he consistent or  
10 self-contradictory? How did the manner and matter of his  
11 direct testimony compare with his manner and matter of tes-  
12 timony tested on cross examination?

13 You should consider not only the intrinsic pur-  
14 suasiveness of each person's testimony by itself but its  
15 setting and the circumstances of the whole case. For example,  
16 the degree to which any particular item of timony is  
17 corroborated or contradicted by other evidence in the case  
18 and all such things you would test by your own mature  
19 judgment about life, about people and about human behavior.

20 The witness may be discredited, or, as we say,  
21 impeached by contradictory evidence or by evidence that at  
22 other times he made statements inconsistent with his tes-  
23 timony on the witness stand. You should consider, among  
24 other things, the question of interest or motive. The  
25 witnesses have identified their backgrounds and associations.

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2 If you believe a witness has willfully sworn falsely before  
3 you, you are free either to disregard all his testimony or  
4 to accept and credit such parts of it as your judgment  
5 dictates should be accepted.

6 There are generally speaking two types of evi-  
7 dence from which a jury may properly find the truth in the  
8 facts of a case. One is direct evidence, such as the tes-  
9 timony of an eye witness or a participant. The other is  
10 indirect or what we call circumstantial evidence which con-  
11 sists of proving a chain of circumstances pointing to the  
12 existence or non-existence of certain facts.

13 In order to prove a fact by circumstantial evi-  
14 dence there must be some positive proof of some fact which,  
15 though true, does not itself directly establish the fact in  
16 dispute but does afford basis for a reasonable inference  
17 of its existence. The fact or facts upon which it is sought  
18 to base an inference must be shown and not left to rest in  
19 conjecture, and when shown it must appear that the inference  
20 drawn is the only one that can fairly and reasonably be  
21 drawn from the facts and that any other explanation is fairly  
22 and reasonably excluded.

23 A common example that I give to jurors of  
24 circumstantial evidence is the following: Suppose when you  
25 came into Court this morning the sun was shining and there

2 were no clouds in the sky, and when you came into the trial  
3 Court the blinds were down so that you couldn't see outside.  
4 Pretty soon somebody came through the door and walked into  
5 the courtroom with a dripping umbrella and a dripping rain-  
6 coat. You have been in the jury room or the courtroom all  
7 this time and haven't been outside. When you left outside  
8 it was clear, but when these people came in with their  
9 dripping umbrellas and raincoats something may have happened  
10 outside. You would be entitled to infer from the circum-  
11 stance that there is a dripping umbrella and a raincoat that  
12 it is raining outside. Thus circumstantially you infer from  
13 a fact, the dripping raincoat and umbrella, some other  
14 matter that it's raining outside. The mind is led circum-  
15 stantly from a fact to reach another fact. That will give  
16 you an illustration of what circumstantial evidence is and  
17 what it may lead to.

18 It is not necessary that the participation or  
19 lack of participation of a defendant in any crime be shown  
20 by direct evidence. The connection may be inferred from  
21 such facts and circumstances as legitimately tend to sus-  
22 tain that inference.

23 You apply to all the evidence the same standard  
24 of proof. It must satisfy you of the guilt of the defendant  
25 beyond a reasonable doubt or else you must acquit the defen-



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2 dant.

3           In order to sustain its burden of proof in this  
4 case against the defendant, the Government must establish  
5 beyond a reasonable doubt these two essential elements:

6           One, that the defendant made a threat against  
7 the person of the President of the United States; and two,  
8 that such threat was knowingly and willfully made.

9           A true threat is not merely a political comment  
10 or jest. Rather a true threat is a statement which, when  
11 uttered, will be taken seriously as a threat by those hear-  
12 ing it. It isn't the intention of the one who makes the  
13 statement; will it be taken seri isly as a threat by those  
14 hearing it? If you find beyond a reasonable doubt that the  
15 defendant made statements that would be interpreted by  
16 reasonable men as a serious expression of an intention to  
17 inflict bodily harm upon or take the life of the President,  
18 then you would be justified in finding that a true threat  
19 was in fact made.

20           The threat to be a crime may be made by words  
21 alone. For it is the forbidden utterance that is the  
22 criminal act. You must, therefore, judge the message the  
23 words communicate in the context and under the circumstances  
24 of the utterance.

25           If you find that a true threat was made and

2 that the defendant made such a threat as I have described,  
3 you must then determine whether the defendant made the threat  
4 knowingly and willfully. The Government does not have to  
5 prove that the defendant uttered the words with an inten-  
6 tion to carry out the threats. In other words, the defen-  
7 dant is charged with committing the knowing and willful  
8 act of threatening the person of the President. Thus what  
9 must be willful is the threat. It is the making of the  
10 threat, not the intent to carry it out, that violates the  
11 law.

12 I instruct you that the elements knowingly and  
13 willfully mean deliberately. They mean intentionally.  
14 In other words, knowingly and willfully mean that the per-  
15 son uttered the words with the comprehension that the words  
16 were a threat, as I have defined it, and that he intended  
17 to make the threat consciously and in the free exercise of  
18 his will and not inadvertently or accidentally.

19 You cannot look into a person's mind to see  
20 what his intentions are or were. You may judge those from  
21 acts, speech and circumstance. A wise and intelligent  
22 consideration of all facts and circumstances shown by the  
23 evidence and the exhibits in the case may enable you to  
24 infer, with a reasonable degree of certainty, what were  
25 the defendant's intentions at the time he made certain

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statements and at the time he committed certain other acts. That reasonable degree of certainty must meet the test of beyond a reasonable doubt.

One of the most important issues in this case, of course, is the identification of the defendant as the perpetrator of the alleged threat. The Government has offered the tapes, and from it the voices you have heard on those tapes as proof on this issue. There is no other proof on this issue. The Government has the burden on this issue of proving identity beyond a reasonable doubt.

This, as I have said before, does not mean mathematical, 100 per cent certainty. It does require a finding beyond a reasonable doubt that it was the defendant who made the telephone call.

If you are not convinced beyond a reasonable doubt that it was the defendant who made the phone call, you must find the defendant not guilty. If you are convinced by the evidence beyond a reasonable doubt that it was the defendant who made the phone call, you may find that the Government has sustained its burden of proof on that.

Before being questioned by Government representatives, according to the Government witness, the defendant was read, and in writing acknowledged having received

2 a statement of his legal rights. That was what he was en-  
3 titled to. The Government was not also obligated to obtain  
4 a signed waiver. That was optional with the defendant.  
5 There was no evidence that the defendant refused to waive  
6 his rights. The testimony indicated that he declined to  
7 also sign a waiver. No evidence indicates that his state-  
8 ments to the agents were not voluntarily given and made at  
9 the interview. The jury may consider the alleged statements  
10 of the defendant, if it believes that they were made on the  
11 interview, as part of the circumstances bearing on his  
12 alleged motive and intent.

13 You will bear in mind that in making these  
14 references to the testimony it is your recollection of the  
15 evidence, not mine or counsel's, that governs you in pass-  
16 ing on the evidence.

17 I have no function in telling you the evidence,  
18 other than to give you my recollection with which you are  
19 not bound in any way.

20 Under your oath as jurors you swore to render  
21 a true verdict on the evidence. The duty of imposing sen-  
22 tence rests exclusively upon this Court. Your function is  
23 to weigh the evidence in the case and determine the guilt  
24 or innocence of the defendant solely on the basis of such  
25 evidence and the law. You cannot allow any consideration

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2 of the punishment which might be inflicted upon a defendant,  
3 if convicted, to influence your verdict in any way or in any  
4 sense enter into your deliberations. Were you to do that  
5 you would be trespassing on the function of the Judge.

6 I want you to listen to each other carefully in  
7 the jury room when you retire to consider this matter. If  
8 you have some views and find that you are wrong and some-  
9 body else is right, don't be embarrassed about changing  
10 your opinion. We are not engaging in a popularity contest  
11 here. But remember each of you has to decide the case for  
12 yourselves. A verdict of guilty or not guilty to be accept-  
13 able must be unanimous.

14 If you desire any of the exhibits or the tapes,  
15 those will be sent to you in the jury room upon request.  
16 If you want any of the testimony that has been allowed in  
17 evidence read to you, that can be done also. Please do  
18 not communicate with anyone concerning your deliberations  
19 about this case except in writing signed by your foreman,  
20 Mrs. Wolf, who sits in the first seat, and she will be pro-  
21 vided with a pencil and paper for that purpose.

22 I would like to take a moment to talk to the  
23 lawyers at the side bar. They may wish to call to my  
24 attention some matter that I may have overlooked or where  
25 I may have misspoken and I will ask you to relax for a

2 moment while I do that.

3 (At the side bar.)

4 THE COURT: Any exceptions or requests on the  
5 part of the Government?

6 MR. COSTELLO: No, your Honor.

7 MR. COHEN: Exceptions first, your Honor. I  
8 object, firstly, to your Honor's comment on the signed  
9 waiver. I did not raise voluntariness. In fact I told  
10 them I wished them to consider the confession. I think  
11 that your comments, if I had raised voluntariness your  
12 comments would have been correct. But they have no appli-  
13 cation since I did not raise voluntariness but used his  
14 methodology merely to show the agent's motive in what he  
15 did.

16 THE COURT: You specifically referred to the  
17 subject of voluntariness and I thought during the trial  
18 by the form and innuendos of your questions that you were  
19 clearly raising that issue. At all events, I have so  
20 charged and at this moment there will be a point to sug-  
21 gesting to the jury that they erase my charge from their  
22 minds.

23 MR. COHEN: I understand, your Honor. I'm  
24 not suggesting that you can do that, but I do respectfully  
25 suggest that it was erroneous. That my summation was

22 WE ARE ONE COMMUNICATING BY THE BLOWING CALL.

23 SO HE WAS MADE A FRIEND. THE ONLY QUESTION OF FRIENDSHIP HERE

24 MR. COHEN: ESSENTIALLY I FOUND THEM FRIENDS AND WE

25 MR. CONKLIN: HOW DO YOU WANT ME TO CHARADE FRIENDSHIP  
26 CHARADE HERE.

27 WE FRIENDED OUTSIDE THE BLOWING CALL. THAT IS NOT THE

28 SO THIS IS THE PRACTICE. SO FRIENDSHIP IS NOT AN INDEPENDENCE THUS  
29 WHICH IS THAT FRIENDSHIP IS NOT A BASED ON A POSITION OF FRIENDSHIP

30 FRIENDSHIP IS NOT BASED ON THE BLOWING CALL. THE EVIDENCE

31 WHICH YOU SAY FRIENDSHIP IS NOT BASED ON FRIENDSHIP, FRIENDSHIP IS NOT BASED  
32 ON FRIENDSHIP ASK THEM WHAT FRIENDSHIP IS NOT BASED ON FRIENDSHIP.

33 MR. CONKLIN: I AM GOING TO MAKE A SUGGESTION, SUGGESTION,

34 FRIENDSHIP IS NOT BASED ON THE BLOWING CALL IF IT IS NOT EFFECTIVE.

35 PRACTICE ON FRIENDSHIP IS NOT BASED ON THE BLOWING CALL. NOW I

36 WHICH IS NOT BASED ON FRIENDSHIP. I TELL FRIENDSHIP IS NOT BASED ON FRIENDSHIP AS A CLOSE  
37 FRIENDSHIP IS NOT BASED ON FRIENDSHIP AS A CLOSE FRIENDSHIP.

38 MR. CONKLIN: I AM GOING TO MAKE A SUGGESTION, SUGGESTION,

39 FRIENDSHIP IS NOT BASED ON THE BLOWING CALL.

40 MR. CONKLIN: SO I DON'T THINK FRIENDSHIP IS NOT BASED ON THE BLOWING CALL.

41 MR. COHEN: IF I FOLLOW THEM I WOULD NOT BE CONSIDERED

42 FRIENDSHIP.

43 MR. CONKLIN: YOU FOLLOW THEM AND NOT BE CONSIDERED

44 FRIENDSHIP.

45 END

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(END OF PAGE.)

(M.R. 01:11 f. SIGHTING OF JET PLANE)

do out now to determine.

THE COURT: That would be all right, Mr. Chairman.  
(INTERMISSION)

THE COURT: Let me just say that.

MR. COHEN: Right, Mr. Chairman. Thank you.

THE COURT: That's it.

That's all I have.

FURTHER. If this content of what you are to consider  
regarding was made available to the Government is considered as being  
privileged and was communicated in the course of the trial. What con-  
sideration is given by you to the possibility of it being  
considered as being privileged for the purpose of classification that  
is to be done to the sources of classification that this only affects

THE COURT: That's all I have. Thank you.

(IN OPEN COURT.)

MR. COHEN: Right, Mr. Chairman.

MR. COHEN: Right, sir.

THE COURT: That's it.



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ATTACHMENT X

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